

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

JUN 16 2009

Michael N. Milby, Clerk of Court

AMPARO A. GASCA

Plaintiff,

vs.

GLACIAL ENERGY HOLDINGS,

Defendant.

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Civil Action Number 4:09-CV-00951

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GLACIAL ENERGY HOLDINGS  
MOTION TO DISMISS PURSUANT TO RULES 12(b)(6)

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Pursuant to Rules 12(b)(6) of the Federal Rules of Civil Procedure, Glacial Energy Holdings (“Glacial”) seeks dismissal of Plaintiff’s claims, and shows:

Plaintiff Amparo A. Gasca (“Gasca”) in this case sues Glacial for an alleged hostile work environment amounting to sexual harassment and/or discrimination and violation of her civil rights under Title VII, 42 U.S.C. 2000 *et seq.* Gasca’s approach in pleading the causes of action in the Plaintiff’s Original Complaint is a meandering of unsubstantiated allegations of a two (2) possibly three (3) alleged events in 2007, which on their face do not amount to sexual harassment or discrimination.

Further, Defendant Glacial Energy Holdings has never employed Plaintiff Amparo A. Gasca. *Attached hereto as Exhibit A is the Affidavit of Charles I. Kaplan.*

Accordingly, Glacial hereby moves, pursuant to Rules 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing Plaintiff’s claims as described above. The grounds for relief are more fully set forth in Glacial’s Brief in Support of its Motion to Dismiss Pursuant to

Rule 12(b)(6) that is filed together with this Motion.

**II.**

**WHEREFORE, PREMISES, CONSIDERED,** Defendant Glacial Energy Holdings, respectfully requests that this Court enter an Order granting this Motion in all respects and dismissing Plaintiff's claims, and for such other and further relief, both at law and in equity, to which Defendant is justly entitled.

Respectfully submitted,

**ERIC D. FEIN, P.C. & ASSOCIATES**

By: 

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**KAPLAN & ASSOCIATES, LLP**

By: 

**Charles I. Kaplan**

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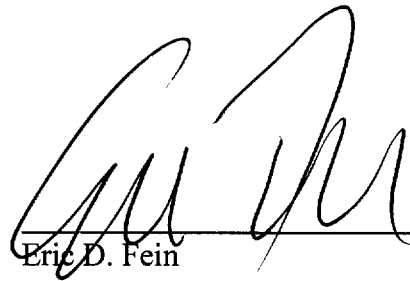
**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing was forwarded via Certified Mail, Return Receipt Requested, First Class Mail, Postage Prepaid, Facsimile, and/or Hand Delivery to attorney for Plaintiff on the 15<sup>th</sup> day of June 2009.

NEWMAN & ASSOCIATES  
Deborah A. Newman  
Anjali A. Parikh  
One Greenway Plaza, Suite 520  
Houston, TX 77046  
(713) 715-4938 - Facsimile

*Attorneys for Plaintiff*

  
Eric D. Fein

# EXHIBIT “A”

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AMPARO A. GASCA

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Civil Action Number 4:09-cv-00951

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**AFFIDAVIT OF CHARLES I. KAPLAN**

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STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public in and for said County and State, on this day personally appeared Charles I. Kaplan, known to me and after being duly sworn, stated under oath:

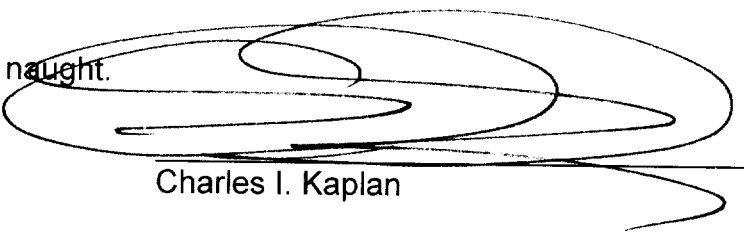
1. "My name is Charles I. Kaplan. I am over the age of eighteen (18) years, of sound mind, and in all respects capable of making this Affidavit. I have never been convicted of a felony or crime of moral turpitude. I have personal knowledge of the facts stated herein and the facts stated herein are true and correct."

2. I am the outside counsel for Glacial Energy Holdings. As outside counsel, I am familiar with the operations of the Company, its personnel and employees.

3. There were no dealings between Glacial Energy Holdings and Amparo Gasca and no employees.

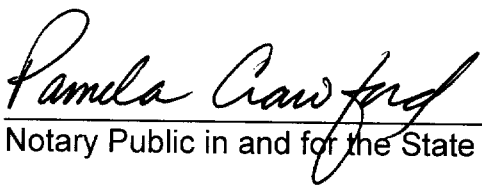
4. Amparo Gasca was not an employee of Glacial Energy Holdings at any time.

Further, Affiant Sayeth naught.

  
Charles I. Kaplan

State of Texas     §  
                             §  
County of Dallas   §

Sworn and subscribed to before me, a Notary Public, on the 15<sup>th</sup> day of June, 2009.

  
Notary Public in and for the State of Texas

